

169-06 22nd Avenue
Whitestone, New York 11357

November 4, 2013

United States Environmental Protection Agency
Region 2
Public Affairs Division
290 Broadway, 26th Floor
New York, New York 10007-1866
Attention: FOIA Officer

Compliance

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USEPA - REG2
PAD - FOIA OFFICE

Re: FREEDOM OF INFORMATION ACT REQUEST (ID: EPA_131104)
Including request for fee waiver

Dear FOIA Officer:

This is a Records Access Request (the "Request"), made pursuant to the Freedom of Information Act ("FOIA"), which is contained within Title 5 of the United States Code, Section 552.

Background:

The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9605, grants citizens the right to petition the Environmental Protection Agency ("EPA") to conduct a preliminary assessment of potential hazards if the petitioners are "or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminate." 42 U.S.C. § 9605(d).

Any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminate, may petition the President to conduct a preliminary assessment of the hazards to public health and the environment which are associated with such release or threatened release.

Id. The Code of Federal Regulations further stipulates that "[a]ny person may petition the lead federal agency to perform a PA (preliminary assessment) of a release when such person is, or may be, affected by a release of a hazardous substance, pollutant, or contaminant." 40 CFR § 300.420(b)(5). This petition must be directed to the EPA Regional Administrator covering the location of the site. *Id.* If the EPA has not previously conducted a preliminary assessment of such release, the EPA "**shall**, within 12 months after the receipt of any such petition, complete such assessment or provide an explanation of why the assessment is not appropriate." 42 U.S.C. § 9605(d) (emphasis added).

EPA must respond to such a petition. See Forest Guardians v. Babbitt, 174 F.3d 1178, 1187 (10th Cir. 1998) ("[W]hen a statute uses the word 'shall,' Congress has imposed a mandatory duty upon the subject of the command"). In addition, the Administrative Procedure Act requires EPA to respond: "Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding." 5 U.S.C. § 555(e).

A preliminary assessment is the first step in the process of including an area on the National Priorities List, and guides EPA in determining which sites warrant further investigation to assess the nature and extent of the risk associated with a release of hazardous substances, pollutants or contaminants.

On information and belief, EPA has received communications from the public petitioning, requesting or otherwise inspiring EPA to conduct a preliminary assessment, pursuant to CERCLA Section 105, of, or encompassing, the area known as Willets Point, Queens. The term "Willets Point" as used herein refers to property located in Queens, New York that is bounded by, and includes, Northern Boulevard to the north; Roosevelt Avenue to the south; the Van Wyck Expressway to the east; and 126th Street to the west. Attached hereto is a map that depicts Willets Point.

Records Presently Requested:

Pursuant to FOIA, I hereby request to receive duplicates of:

- (a.) All records that constitute communications from the public to EPA, that petition or otherwise request EPA to conduct a preliminary assessment of, or encompassing, Willets Point. This Request Item (a.) includes but is not limited to all letters and all attachments thereto.

And:

- (b.) All other records not described by paragraph (a.) above that constitute communications from the public to EPA, that pertain to Willets Point and were considered by EPA when determining whether or not to conduct a preliminary assessment of, or encompassing, Willets Point. This Request Item (b.) includes but is not limited to all letters and all attachments thereto.

And:

- (c.) All records that constitute communications from the public to EPA, that allege or suggest that Willets Point may be a "Superfund" site. This Request Item (c.) includes but is not limited to all letters and all attachments thereto.

requested records available because other portions of the requested records are not yet found, redacted or otherwise prepared for release.

If this Request is denied in whole or in part, I ask that you please specify the statutory exemption(s) claimed for each record or portion thereof to which access is denied. If you choose to withhold any record in its entirety, then please specify, in addition to the statutory exemption(s) claimed for each record or portion thereof, the date of and (if the record is a document) the number of pages in the entire record. Please advise me of any destruction of records relating to this Request, and include the date of and authority for such destruction. If any part of a requested record does not exist, then I request to be so notified in writing.

I request to receive the maximum possible amount of each responsive record's content, irrespective of the perceived significance of any particular content.

I am willing to pay costs for preparation of duplicate records in fulfillment of this Request, up to a maximum amount of \$100.00 USD. If you estimate that the fees will exceed this limit, then please inform me first so that I may consider how to proceed.

Notwithstanding the above-described willingness to pay duplication costs, I believe that this Request is eligible to be fulfilled without any charge or at a reduced charge, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii):

Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

I hereby certify that disclosure of the records to which this Request pertains is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Accordingly, I hereby request that records that are responsive to this Request be furnished without any charge or at a reduced charge.

* * *

I request that all of your communications with me concerning this Request be in writing. Please address all correspondence to:

Robert LoScalzo
169-06 22nd Avenue
Whitestone, New York 11357

Thank you in advance for your anticipated cooperation and assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert LoScalzo". The signature is fluid and cursive, with the first name "Robert" and last name "LoScalzo" clearly distinguishable.

Robert LoScalzo

1 enclosure

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